

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

VS.

PHILLIP E. (RICK) POWELL

Defendant.

[illegible]

Civil Action No. 6:11-CV-161-WSS

**PLAINTIFF'S UNOPPOSED MOTION TO DISMISS WITH PREJUDICE
REMAINING CLAIMS AGAINST DEFENDANT PHILLIP E. (RICK) POWELL**

Plaintiff Securities and Exchange Commission hereby moves to dismiss, with prejudice, the remaining claims against Defendant Phillip E. (Rick) Powell in the pending civil action. In support, Plaintiff states:

1. The Commission filed its Complaint on June 10, 2011.
2. On October 11, 2012, the Court granted summary judgment to Defendant Powell on the Commission's claims under Section 10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934 ("Exchange Act"). The Court ruled that a genuine issue of material fact remained regarding the Commission's claim under Section 16 of the Exchange Act. A non-jury trial is set to commence on January 7, 2013.
3. In the interests of judicial economy, the Commission moves to dismiss with prejudice all the remaining claims against Defendant Powell, including the claims that he

violated Section 16 of the Exchange and Rule 16a-3 thereunder and all the Commission's requests for relief against Powell.

4. There is no pending counterclaim against the Commission, and if the Court grants this unopposed motion it will resolve all pending matters in this case.

5. The Commission respectfully requests that its motion be granted and that the Court enter the proposed order, filed herewith.

Dated this 17th day of December, 2012.

Respectfully submitted,

/s/ David B. Reece

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CERTIFICATE AS TO CONFERENCE

On December 17, 2012, the undersigned conferred with Defendants' counsel who indicated that they did not oppose the Commission's motion to dismiss.

/s/ David B. Reece

David B. Reece

CERTIFICATE OF SERVICE

I certify that on December 17, 2012, I electronically filed the foregoing ***Plaintiff's Motion to Dismiss*** with the Clerk of the Court for the Western District of Texas, Waco Division, using the CM/ECF system. The electronic case filing system will send a "Notice of Electronic Filing" to all counsel of record who has consented in writing to accept service of this document by electronic means.

/s/ David B. Reece

David B. Reece